

31 August 2018

Attention: Alan Worsley
Senior Specialist, Strategic Policy
Australian Securities & Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

By e-mail: policysubmissions@asic.gov.au

Dear Mr Worsley

ASIC Consultation Paper 301: Foreign financial services providers

We welcome the opportunity to make a submission in respect of ASIC Consultation Paper 301: Foreign financial services providers (**CP 301**) which was released in June 2018.

By way of background, the Property Funds Association of Australia (**PFA**) is the peak body industry body representing the Australian unlisted wholesale and retail property funds sector, currently some \$79 billion in size.

The PFA's members consist of Australian Financial Services Licensed property fund managers, their advisors, consultants and representatives.

We have provided our comments to specific aspects of the proposals in CP 301 in the following pages.

We again thank you for the opportunity to provide this submission.

Should you have any questions in respect of our submission, please do not hesitate to contact myself ([REDACTED]) as we would be happy to be part of the dialogue of the consultation process.

Kind Regards,



Paul Healy
Chief Executive Officer
Property Funds Association of Australia

KEY ISSUES

1. Repeal of FFSP relief

The PFA supports the proposals for ASIC to:

- repeal the sufficient equivalence relief and any individual relief issued on similar terms (with a 12-month transition period from 1 October 2019 to 30 September 2020 for FFSPs wishing to obtain a modified AFS licence); and
- implement a modified AFS licensing regime for sufficient equivalence foreign financial services providers (**FFSPs**), such that eligible FFSPs can apply for and maintain a modified AFS licence); and
- roll over the sufficient equivalence relief and individual relief issued on similar terms for a further 12 months, until 30 September 2019, to allow time for industry to engage with the proposal.

We are of the view that, generally speaking, FFSPs providing financial services to wholesale clients in Australia should face similar requirements to those imposed on domestic providers of financial services and that imposing a modified AFS licence strikes an appropriate balance between cross-border investment facilitation and investor protection. We also recognise that regulators in other jurisdictions do not generally provide an exemption to Australian financial services providers to the extent of the current FFSP sufficient equivalence relief.

2. Proposed repeal of the limited connection relief

The proposed repeal of the limited connection relief provided under *ASIC Corporations (Foreign Financial Services Providers-Limited Connection Relief) Instrument 2017/182* means that offshore providers of financial services that have a limited connection to Australia but do not intend to apply for a modified AFS licence, may not be able to provide services to Australian wholesale clients. This is because other licensing exemptions may not be available.

While we agree with the proposed repeal of the FFSP relief in favour of a modified AFS licence regime, the breadth of the deeming provision in section 911D of the Corporations Act and the limited number of other potential licensing exemptions may restrict choices for Australian collective investment vehicles that wish to appoint an offshore financial services provider in circumstances where the Australian client has approached the provider on a reverse inquiry basis.

We note that, if the limited connection relief is repealed, there may be uncertainty about the availability of the following AFS licence exemptions or the exemptions may not be applicable in the circumstances described above, for the following reasons:

- the exemption in section 911A(2D) (as inserted by Corporations Regulation 7.6.02AG) is limited because it only applies to a product issuer. It doesn't therefore extend to provision of investment management services under a separate mandate;
- the exemption in section 911A(2A) (as inserted by Corporations Regulation 7.6.02AG) only applies where there is no inducement. The provision of a financial service itself could be interpreted as inducing the client in relation to that service and also in relation to other future services; and
- the exemption in section 911A(2C) (as inserted by Corporations Regulation 7.6.02AG), which applies to provision of services to an AFSL holder, does not apply to an AFSL holder acting as a trustee or responsible entity or on behalf of someone else. This exemption is therefore not available for provision of services to operators of collective investment vehicles in Australia.

For these reasons, we submit that the limited connection relief should be retained, in a modified form to accommodate provision of services on a reverse inquiry basis in respect of a wider range of financial services than the issue of a financial product by a product issuer (which is covered by section 911A(2D)).

We also submit that ASIC should consult on, and provide further guidance on, the deeming provision in section 911D of the Corporations Act and the above exemptions so that offshore fund managers and their Australian wholesale clients have some additional certainty about the practical application of those exemptions.